

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>Kyle Schimmer Ida County, Iowa</b>	ADMINISTRATIVE CONSENT ORDER  NO. 2014-AQ- 14
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TO: Kyle Schimmer  
1526 Landmark Avenue  
Galva, Iowa 51020

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kyle Schimmer for the purpose of resolving violations pertaining to illegal open burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Lois Benson  
Iowa Department of Natural Resources  
Field Office No. 3  
1900 N. Grand  
Gateway North, Suite E17  
Spencer, Iowa 51301  
Phone: 712-262-4177

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515-725-9551

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On December 8, 2013, DNR Field Office 3 received an anonymous complaint alleging that Kyle Schimmer had burned many tires at a location on the north edge of Galva, Ida County, Iowa. The open burning violation took place in the northeast ¼ of Section 23, T89, N39W Galva Township in Ida County (the site) on property owned by Kyle and Jennifer Schimmer. The complainant submitted photographs to DNR showing a large amount of black smoke from the site. In the photographs, the smoke was visible from a nearby road.

2. On December 9, 2013, Lois Benson of DNR Field Office 3 visited the site. While at the site, Ms. Benson observed the steel band remnants from the burning of several waste tires, along with the remains of many huge cottonwood trees. Photos were taken at the site to document the violations.

3. Just prior to the site visit, Ms. Benson contacted Mr. Schimmer by telephone. Mr. Schimmer stated that he had previously cut down many cottonwood trees and placed them in three piles. Mr. Schimmer burned all three piles of felled trees. One pile was burned without the addition of any tires. Mr. Schimmer placed two tires in the second pile prior to burning it, and Mr. Schimmer placed fifteen or more tires in the third pile prior to burning it. Mr. Schimmer's intention in placing the tires on the fires was to assist the fires in burning. Mr. Schimmer stated he was unaware that open burning of tires was a violation of the law in Iowa.

4. Mr. Schimmer admitted to Ms. Benson that he started the fire on Sunday, December 8, 2013. He stated that because there was snow on the ground and the winds were calm, he thought it would be safe to burn at the site, which is approximately 1/3 of a mile from the nearby town of Galva. Mr. Schimmer stated that he travels for his job as a crop adjuster, and he wanted to be nearby to monitor the fire over the weekend.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2)

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(variances) and 23.2(3) (exemptions). The burning of tires is specifically prohibited. The illegal open burning of solid waste, including the burning of seventeen tires, demonstrates violations of this provision.

**V. ORDER**

THEREFORE, DNR orders and Kyle Schimmer agrees to the following:

1. Kyle Schimmer shall pay a penalty of \$750.00 within 30 days of the date this order is signed by the Director, and
2. Kyle Schimmer shall cease all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning open burning.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$750.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Kyle Schimmer saved time and money on transportation and landfill disposal fees. Ida County does not have a landfill so the nearest place for disposal of tires would be the Cherokee landfill. Ida County is in Cherokee's comprehensive planning area. The cost of tire disposal at the Cherokee landfill is \$5.00 per tire. For seventeen tires, this cost would be \$85, in addition to the cost of transporting the tires to the landfill. Therefore, the estimated economic benefit is \$300.00.

Gravity of the Violation – The open burning of tires and other waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to

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human health and the environment. Further, the open burning of tires releases toxins into the air, including the following contaminants: polycyclic aromatic hydrocarbons (PAHs), benzene, styrene, phenols, and butadiene. Further, illegal open burning threatens the integrity of DNR's environmental programs and efforts to protect the State of Iowa's valuable natural resources. Therefore, the amount of \$225.00 is assessed for the gravity of the violation.


Culpability – Kyle Schimmer has intentionally open burned prohibited solid waste materials. Mr. Schimmer admitted to Ms. Benson that he placed tires into two piles of felled trees and set them on fire on purpose. Kyle Schimmer has a responsibility to properly dispose of waste materials, to be knowledgeable of the DNR's requirements, and to be alert to the probability that his conduct is subject to DNR's rules. For the above reasons, the amount of \$225.00 is assessed for culpability.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Kyle Schimmer. For that reason, Kyle Schimmer waives his right to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 2<sup>nd</sup> day of  
April, 2014.

  
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Kyle Schimmer

Dated this 24 day of  
March, 2014.

DNR Field Office 3; Anne Preziosi; VII.C.2